

## **COMMENTS**

The Enclosed is responsive to the Examiner's Office Action mailed on October 7, 2011 and is being filed pursuant to a Request for Continued Examination (RCE) as provided under 37 CFR 1.114. At the time the Examiner mailed the Office Action claims 21-28 were pending. By way of the present response the Applicant has: 1) amended claim 27; and, 2) not canceled or added any claims. As such claims 21 – 28 remain pending. The Applicant respectfully requests reconsideration of the instant application and the allowance of claims 21 – 28.

Independent claim 27 stands rejected under 35 USC 101 as being directed to non patentable subject matter. In response, the Applicant has expressly disavowed coverage of transitory electromagnetic signals so as to include truly stored and not transitory matter. As such the Applicant respectfully requests the removal of the Examiner's rejection.

Independent claims 21, 23 and 27 stand rejected under 35 USC 103 as being obvious in view of the Kuhn, Vetro and Azadegan references. The Applicant's claims are directed to three different ways of changing bit rates of frame parts in response to network congestion. Specifically, each of independent claims 21, 23 and 27 recite:

(i) "in response to the detecting of [a] first network congestion, reducing the bit rate of the second part of the frame while maintaining the bit rate of the first part of the frame";

(ii) "in response to the detecting of [a] second network congestion, reducing the bit rates of the first and second parts of the frame wherein the bit rate of the second part of the frame is reduced more than the bit rate of the first part of the frame is reduced";

(iii) "in response to the detecting of [a] third network congestion, reducing the bit rate of an area of the frame having a priority level less than the highest priority level to a bit rate that corresponds to that of the second part of the frame".

Notably, each of the three specific congestion responses (i), (ii) and (iii) are performed by a same system. This in and of itself is inventive, as the Examiner has relied on multiple references to meet limitations (i), (ii) and (iii) individually. If the Applicant were to broaden the claims simply to recite "three different adjustments of frame part bit rate in response to network congestion within a same system" the Examiner "might" be able meet that limitation with the disclosure of col. 11, lines 21 – 40 of Vetro as it mentions that "various techniques can be employed to reduce the bit rate depending on the ratio of incoming to outgoing rate" (Vetro, col., 11, lines 21-23). However, this specific disclosure of Vetro is lacking as to any kind of detail of such various techniques other than a single technique disclosed at col. 11, lines 40 – 43, which, arguably meets limitation (i) above.

With respect to limitations ii) and iii) above, however, the Examiner's theory of rejection is simply not credible as the Examiner has not cited any detailed disclosure in the references that teach these two techniques specifically. With respect to limitation ii), the Examiner simply concludes that it is obvious in view of Vetro. No similar or related specific technique is actually

disclosed in Vetro, however. Worse yet, the Examiner relies on Azadegan to meet limitation (iii). Azadegan simply does not contemplate network congestion as a motivation for changing bit rate of a frame part. Moreover, the Examiner seems to hinge a conclusory finding of obviousness of limitation (iii) on the fact that Azadegan speaks of different frame part priorities. Limitation iii) involves more than just different frame part priorities. In particular, limitation iii) is also directed to changing the bit rate of a frame area to the bit rate of another frame part. Applying this specific technique in response to network congestion is simply not disclosed or even remotely suggested by either of the Vetro or Azadegan references alone or in combination. To simply conclude that limitation iii), particularly when considering that it is part of a system that also includes the techniques of limitations i) and ii), is simply not credible. In this regard, the Applicant contests that the Examiner is clearly using hindsight. The primary examiner of the Great Britain counterpart would appear to agree with the Applicant as the Great Britain patent office allowed these same claims last year.

See, submitted IDS.

## CONCLUSION

Applicant respectfully submits that the rejections have been overcome by the amendments and remarks, and that the pending claims are in condition for allowance. Accordingly, Applicant respectfully requests the rejections be withdrawn and the pending claims be allowed.

If there are any additional charges, please charge Deposit Account No. 02-2666 for any fee deficiency that may be due.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Date: /2-7-2012/      /Robert B. O'Rourke/  
Robert B. O'Rourke  
Reg. No. 46,972

1279 Oakmead Parkway  
Sunnyvale, California 94085-4040  
(408)720-8300